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ATTORNEYS FOR Defendant
EL SUPER BURRITO, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

IRMA RAMIREZ and DAREN HEATHERLY,
each an individual,

Plaintiffs,

vs.

EL SUPER-BURRITO, INC., a California
CORPORATION; and THE WELCH FAMILY
PARTNERSHIP, a California Limited
Partnership

Defendants.

Case No. C 11-0807 DMR

EL SUPER BURRITO, INC.'S ANSWER TO
COMPLAINT FOR INJUNCTIVE RELIEF AND
DAMAGES

COMES NOW defendant EL SUPER BURRITO, INC. and in response to the complaint of
plaintiffs on file herein, herewith admits, denies, and aver as hereinafter set forth.

I.

Responding to paragraph 1 of the complaint, this responding defendant avers that the allegations
are merely legal conclusions and that no response is therefore required; to the extent a further,
substantive response is required, this defendant denies the remaining allegations therein contained.

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II.

Responding to paragraph 2 of the complaint, this responding defendant lacks sufficient information to form a belief as to the truth of the allegations that plaintiffs are persons with disabilities or that they visited the premises of El Super Burrito, Inc. on the dates alleged, or on any dates. This responding defendant denies the remaining allegations therein contained.

III.

Responding to paragraph 3 of the complaint, this responding defendant avers that the allegations are merely legal conclusions and that no response is therefore required; this responding defendant does not dispute this Court's subject matter jurisdiction over the federal claims alleged; to the extent a further, substantive response is required, this defendant denies the remaining allegations therein contained.

IV.

Responding to paragraph 4 of the complaint, this responding defendant admits that it operates a business at the address alleged and that the address alleged is located in the County of San Mateo, State of California; the remaining allegations are merely legal conclusions and no response is therefore required; to the extent a further, substantive response is required, this defendant denies the remaining allegations therein contained.

V.

Responding to paragraph 5 of the complaint, this responding defendant lacks sufficient information to form a belief as to the truth of the allegations that plaintiffs are persons with disabilities, much less persons with the particular disabilities alleged and on that basis denies the allegations; the remaining allegations are merely legal conclusions and no response is therefore required; to the extent a further, substantive response is required, this defendant denies the remaining allegations therein contained.

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VI.

Responding to paragraph 6 of the complaint, this responding defendant admits that El Super Burrito, Inc. is a California corporation and the lessee of property located at 780 El Camino Real, Millbrae, California; the remaining allegations are either legal conclusions to which no response is required or matters as to which it lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies those allegations.

VII.

Responding to paragraph 7 of the complaint, this responding defendant avers that the allegations are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the remaining allegations therein contained.

VIII.

Responding to paragraph 8 of the complaint, this responding defendant admits that El Super Burrito, Inc. is a California corporation; as to the remaining allegations, defendant avers that they are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the remaining allegations therein contained.

IX.

Responding to paragraph 9 of the complaint, this responding defendant admits that El Super Burrito, Inc. is a restaurant located at 780 El Camino Real, Millbrae, California; as to the remaining allegations, defendant avers that they are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the remaining allegations therein contained.

X.

Responding to paragraph 10 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies them.

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XI.

Responding to paragraph 11 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies them.

XII.

Responding to paragraph 12 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies them.

XIII.

Responding to paragraph 13 of the complaint, this responding defendant lacks sufficient information to form a belief as to the truth of the allegations therein contained and on that basis denies them.

XIV.

Responding to paragraph 14 of the complaint, this responding defendant lacks sufficient information to form a belief as to the truth of the allegations therein contained and on that basis denies them.

XV.

Responding to paragraph 15 of the complaint, this responding defendant lacks sufficient information to form a belief as to the truth of the allegations therein contained and on that basis denies them.

XVI.

Responding to paragraph 16 of the complaint, this responding defendant lacks sufficient information to form a belief as to the truth of the allegations therein contained and on that basis denies them.

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XVII.

Responding to paragraph 17 of the complaint, this responding defendant lacks sufficient information to form a belief as to the truth of the allegations therein contained and on that basis denies them.

XVIII.

Responding to paragraph 18 of the complaint, this responding defendant lacks sufficient information to form a belief as to the truth of the allegations therein contained and on that basis denies them.

XIX.

Responding to paragraph 19 of the complaint, this responding defendant avers that the allegations therein contained are either legal conclusions to which no response is required or matters as to which it lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies those allegations.

XX.

Responding to paragraph 20 of the complaint, this responding defendant avers that the allegations therein contained are either legal conclusions to which no response is required or matters as to which it lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies those allegations.

XXI.

Responding to paragraph 21 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies them.

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XXII.

Responding to paragraph 22 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies them.

XXIII.

Responding to paragraph 23 of the complaint, this responding defendant avers that the allegations therein contained are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the remaining allegations therein contained.

XXIV.

Responding to paragraph 24 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies them.

XXV.

Responding to paragraph 25 of the complaint, this responding defendant avers that the allegations therein contained are either legal conclusions to which no response is required or matters as to which it lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies those allegations.

XXVI.

Responding to paragraph 26 of the complaint, this responding defendant lacks sufficient information to form a belief as to the truth of the allegations therein contained and on that basis denies them.

XXVII.

Responding to paragraph 27 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations

1 pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the
2 allegations and on that basis denies them.

3 XXVIII.

4 Responding to paragraph 28 of the complaint, to the extent the allegations therein contained
5 pertain to this responding defendant, defendant denies those allegations; to the extent the allegations
6 pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the
7 allegations and on that basis denies them.

8 XXIX.

9 Responding to paragraph 29 of the complaint, this responding defendant avers that the
10 allegations are merely legal conclusions and that no response is therefore required; to the extent a further,
11 substantive response is required, this defendant denies the allegations therein contained.

12 XXX.

13 Responding to paragraph 30 of the complaint, this responding defendant avers that to the extent
14 the allegations purport to recite the relief to which plaintiffs claim to be entitled, no response is required;
15 to the extent a further, substantive response is required, this defendant denies the allegations therein
16 contained.

17 XXXI.

18 Responding to paragraph 31 of the complaint, this responding defendant avers that to the extent
19 the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no
20 response is required; to the extent a further, substantive response is required, this defendant denies the
21 allegations therein contained.

22 XXXII.

23 Responding to paragraph 32 of the complaint, this responding defendant avers that to the extent
24 the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no
25 response is required; to the extent a further, substantive response is required, this defendant denies the
26 allegations therein contained.

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XXXIII.

Responding to paragraph 33 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies them.

XXXIV.

Responding to paragraph 34 of the complaint, this responding defendant avers that the allegations therein contained are either legal conclusions to which no response is required or purport to recite the relief to which plaintiffs claim to be entitled, no response is required; to the extent a further, substantive response is required, this defendant denies the allegations therein contained.

XXXV.

Responding to paragraph 35 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies them.

XXXVI.

Responding to paragraph 36 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies them.

XXXVII.

Responding to paragraph 37 of the complaint, to the extent the allegations therein contained pertain to this responding defendant, defendant denies those allegations; to the extent the allegations pertain to another party, defendant lacks sufficient information to form a belief as to the truth of the allegations and on that basis denies them.

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1 XXXVIII.

2 Responding to paragraph 38 of the complaint, this responding defendant lacks sufficient
3 information to form a belief as to the truth of the allegations therein contained and on that basis denies
4 them.

5 XXXIX.

6 Responding to paragraph 39 of the complaint, this responding defendant re-alleges and
7 incorporates by this reference, as though fully set forth here, the admissions, denials, and averments set
8 forth in paragraphs I through XXXVIII, above.

9 XL.

10 Responding to paragraph 40 of the complaint, this responding defendant avers that the
11 allegations contained therein are merely legal conclusions and that no response is therefore required.

12 XLI.

13 Responding to paragraph 41 of the complaint, this responding defendant avers that the
14 allegations contained therein are merely legal conclusions and that no response is therefore required.

15 XLII.

16 Responding to paragraph 42 of the complaint, this responding defendant avers that the
17 allegations contained therein are merely legal conclusions and that no response is therefore required.

18 XLIII.

19 Responding to paragraph 43 of the complaint, this responding defendant avers that the
20 allegations contained therein are merely legal conclusions and that no response is therefore required.

21 XLIV.

22 Responding to paragraph 44 of the complaint, this responding defendant avers that the
23 allegations contained therein are merely legal conclusions and that no response is therefore required.

24 XLV.

25 Responding to paragraph 45 of the complaint, this responding defendant avers that the
26 allegations contained therein are merely legal conclusions and that no response is therefore required.

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1 XLVI.

2 Responding to paragraph 46 of the complaint, this responding defendant avers that the
3 allegations contained therein are merely legal conclusions and that no response is therefore required.

4 XLVII.

5 Responding to paragraph 47 of the complaint, this responding defendant avers that the
6 allegations contained therein are merely legal conclusions and that no response is therefore required.

7 XLVIII.

8 Responding to paragraph 48 of the complaint, this responding defendant avers that the
9 allegations contained therein are merely legal conclusions and that no response is therefore required.

10 XLIX.

11 Responding to paragraph 49 of the complaint, this responding defendant avers that the
12 allegations contained therein are merely legal conclusions and that no response is therefore required.

13 L.

14 Responding to paragraph 50 of the complaint, this responding defendant avers that the
15 allegations contained therein are merely legal conclusions and that no response is therefore required.

16 LI.

17 Responding to paragraph 51 of the complaint, this responding defendant re-alleges and
18 incorporates by this reference, as though fully set forth here, the admissions, denials, and averments set
19 forth in paragraphs I through L, above.

20 LII.

21 Responding to paragraph 52 of the complaint, this responding defendant avers that the
22 allegations contained therein are merely legal conclusions and that no response is therefore required.

23 LIII.

24 Responding to paragraph 53 of the complaint, this responding defendant avers that the
25 allegations contained therein are merely legal conclusions and that no response is therefore required.

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LIV.

Responding to paragraph 54 of the complaint, this responding defendant avers that the allegations contained therein are merely legal conclusions and that no response is therefore required.

LV.

Responding to paragraph 55 of the complaint, this responding defendant avers that the allegations contained therein are merely legal conclusions and that no response is therefore required.

LVI.

Responding to paragraph 56 of the complaint, this responding defendant avers that the allegations contained therein are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the allegations therein contained.

LVII.

Responding to paragraph 57 of the complaint, this responding defendant avers that the allegations contained therein are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the allegations therein contained.

LVIII.

Responding to paragraph 58 of the complaint, this responding defendant avers that the allegations contained therein are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the allegations therein contained.

LIX.

Responding to paragraph 59 of the complaint, this responding defendant avers that the allegations contained therein are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the allegations therein contained.

1 LX.

2 Responding to paragraph 60 of the complaint, this responding defendant avers that to the extent
3 the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no
4 response is required; to the extent a further, substantive response is required, this defendant denies the
5 allegations therein contained.

6 LXI.

7 Responding to paragraph 61 of the complaint, this responding defendant avers that to the extent
8 the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no
9 response is required; to the extent a further, substantive response is required, this defendant denies the
10 allegations therein contained.

11 LXII.

12 Responding to paragraph 62 of the complaint, this responding defendant avers that to the extent
13 the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no
14 response is required; to the extent a further, substantive response is required, this defendant denies the
15 allegations therein contained.

16 LXIII.

17 Responding to paragraph 63 of the complaint, this responding defendant re-alleges and
18 incorporates by this reference, as though fully set forth here, the admissions, denials, and averments set
19 forth in paragraphs I through LXII, above.

20 LXIV.

21 Responding to paragraph 64 of the complaint, this responding defendant avers that the
22 allegations contained therein are merely legal conclusions and that no response is therefore required.

23 LXV.

24 Responding to paragraph 65 of the complaint, this responding defendant avers that the
25 allegations contained therein are merely legal conclusions and that no response is therefore required; to
26 the extent a further, substantive response is required, this defendant denies the allegations therein
27 contained.

1 LXVI.

2 Responding to paragraph 66 of the complaint, this responding defendant avers that the
3 allegations contained therein are merely legal conclusions and that no response is therefore required; to
4 the extent a further, substantive response is required, this defendant denies the allegations therein
5 contained.

6 LXVII.

7 Responding to paragraph 67 of the complaint, this responding defendant avers that the
8 allegations contained therein are merely legal conclusions and that no response is therefore required; to
9 the extent a further, substantive response is required, this defendant denies the allegations therein
10 contained.

11 LXVIII.

12 Responding to paragraph 68 of the complaint, this responding defendant avers that the
13 allegations contained therein are merely legal conclusions and that no response is therefore required; to
14 the extent a further, substantive response is required, this defendant denies the allegations therein
15 contained.

16 LXIX.

17 Responding to paragraph 69 of the complaint, this responding defendant avers that to the extent
18 the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no
19 response is required; to the extent a further, substantive response is required, this defendant denies the
20 allegations therein contained.

21 LXX.

22 Responding to paragraph 70 of the complaint, this responding defendant avers that to the extent
23 the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no
24 response is required; to the extent a further, substantive response is required, this defendant denies the
25 allegations therein contained.

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LXXI.

Responding to paragraph 71 of the complaint, this responding defendant avers that to the extent the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no response is required; to the extent a further, substantive response is required, this defendant denies the allegations therein contained.

LXXII.

Responding to paragraph 72 of the complaint, this responding defendant re-alleges and incorporates by this reference, as though fully set forth here, the admissions, denials, and averments set forth in paragraphs I through LXXI, above.

LXXIII.

Responding to paragraph 73 of the complaint, this responding defendant avers that the allegations contained therein are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the allegations therein contained.

LXXIV.

Responding to paragraph 74 of the complaint, this responding defendant avers that the allegations contained therein are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the allegations therein contained.

LXXV.

Responding to paragraph 75 of the complaint, this responding defendant avers that the allegations contained therein are merely legal conclusions and that no response is therefore required; to the extent a further, substantive response is required, this defendant denies the allegations therein contained.

LXXVI.

Responding to paragraph 76 of the complaint, this responding defendant avers that to the extent the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no

1 response is required; to the extent a further, substantive response is required, this defendant denies the
2 allegations therein contained.

3 LXXVII.

4 Responding to paragraph 77 of the complaint, this responding defendant avers that to the extent
5 the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no
6 response is required; to the extent a further, substantive response is required, this defendant denies the
7 allegations therein contained.

8 LXXVIII.

9 Responding to paragraph 78 of the complaint, this responding defendant avers that to the extent
10 the allegations purport to recite the damages and other relief to which plaintiffs claim to be entitled, no
11 response is required; to the extent a further, substantive response is required, this defendant denies the
12 allegations therein contained.

13 **AFFIRMATIVE DEFENSES**

14 LXXIX.

15 AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
16 FILE HEREIN, this answering defendant alleges that plaintiffs' complaint, and each cause of action
17 thereof, fails to state facts sufficient to constitute a cause of action against this defendant.
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19 LXXX.

20 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
21 FILE HEREIN, this answering defendant alleges that this court lacks subject matter jurisdiction over
22 this matter because there is no actionable wrong arising under the Americans with Disabilities Act of
23 1990, 42 U.S.C. § 12101 *et seq.*

24 LXXXI.

25 AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
26 FILE HEREIN, this answering defendant alleges that this court lacks supplemental jurisdiction over all
27 claims arising under California state law, including, but not limited to, claims under California Health and
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1 Safety Code § 19955, *et seq.*, and California Civil Code §§ 51, 51.5, 54, *et seq.*, because there is no
2 actionable wrong arising under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*

3 LXXXII.

4 AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
5 FILE HEREIN, this answering defendant alleges that this court lacks subject matter jurisdiction over
6 this matter because there is no actionable wrong arising under California Health and Safety Code §
7 19955, *et seq.*

8 LXXXIII.

9 AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
10 FILE HEREIN, this answering defendant alleges that this court lacks subject matter jurisdiction over
11 this matter because there is no actionable wrong arising under Cal. Civ. Code §§ 54, 54.1, 54.3, *et seq.*

12 LXXXIV.

13 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON
14 FILE HEREIN, this answering defendant alleges that this court lacks subject matter jurisdiction over
15 this matter because there is no actionable wrong arising under the Unruh Civil Rights Act, Cal. Civ. Code
16 §§ 51, 51.5, *et seq.*

17 LXXXV.

18 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
19 ON FILE HEREIN, this answering defendant alleges that plaintiffs' claims are barred, in whole or in
20 part, by the doctrines of estoppel, waiver, laches, and unclean hands.

21 LXXXVI.

22 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT
23 ON FILE HEREIN, this answering defendant alleges that plaintiffs have not suffered any loss or harm
24 as a result of any act or omission of this responding defendant and, therefore, plaintiffs' complaint
25 against defendant is barred.
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LXXXVII.

AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering defendant alleges that plaintiffs failed subsequent to the events described in the complaint properly to mitigate their damages and thereby are precluded from recovering those damages which could have reasonably been avoided by the exercise of due care on their part.

LXXXVIII.

AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering defendant alleges, on information and belief, that no removal of barriers or alternative methods of modification are or were “readily achievable” as defined in Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*)

LXXXIX.

AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering defendant alleges that at all relevant times, defendant has met all federal and state statutory and regulatory obligations owed to plaintiffs and all other individuals with disabilities, and therefore plaintiffs’ complaint against defendant is barred.

XC.

AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering defendant alleges that imposition of any punitive or exemplary damages in this matter would violate defendant’s rights to due process of law in violation of the California Constitution and the United States Constitution.

XCI.

AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE COMPLAINT ON FILE HEREIN, this answering defendant alleges that named and/or unnamed third parties were careless, negligent or at fault for the matters alleged in the complaint; that said carelessness, negligence or fault of said named and/or unnamed third parties proximately contributed to the

1 happening of the events alleged and to the injuries, loss and damage complained of by plaintiffs, if any
2 there were; that should plaintiffs recover damages, this answering defendant is entitled to have the
3 amount thereof abated, reduced or eliminated to the extent that said named and/or unnamed third
4 parties caused or contributed to plaintiffs' injuries, if any.

5 XCII.

6 AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
7 COMPLAINT ON FILE HEREIN, this answering defendant alleges that plaintiffs acted with full
8 knowledge of all the facts and circumstances surrounding their injuries and assumed the risk of the
9 matters causing their injuries, and that said matters of which plaintiffs assumed the risk proximately
10 contributed to the happening of the events at bar and proximately caused their injuries and damages, if
11 any.
12

13 WHEREFORE, this answering defendant prays for judgment as follows:

- 14 1. That plaintiffs take nothing by virtue of their complaint on file herein and that this action
15 be dismissed;
16 2. For costs of suit herein incurred;
17 3. For reasonable attorneys' fees incurred;
18 4. That plaintiffs' requested injunction be denied; and
19 5. For such other and further relief as the Court may deem just and proper.
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21 Dated: April 27, 2011

CODDINGTON, HICKS & DANFORTH

22 /s/ *Richard G. Grotch*

23 By: _____
24 Richard G. Grotch
25 Attorney for Defendant
26 El Super Burrito, Inc.
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